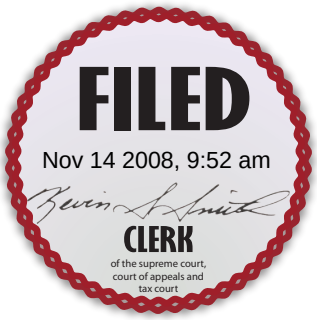

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IN THE COURT OF APPEALS OF INDIANA

IN RE: THE MATTER OF M.W.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A02-0804-JV-356
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-0709-JD-2733

November 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

M.W. appeals his placement in the Department of Correction ("DOC") following his adjudication as a delinquent child. M.W. asserts the court abused its discretion because the DOC was not the least restrictive appropriate placement. In light of M.W.'s history, we find no abuse of discretion and affirm.

FACTS AND PROCEDURAL HISTORY

On September 1, 2007, sixteen-year-old M.W. served as a look-out while his friends stole a bicycle. For his actions, the State alleged M.W. was a delinquent for committing acts that would have been burglary, theft, and resisting law enforcement if M.W. had been an adult. Pending a final hearing, M.W. was released to stay with his grandparents while being electronically monitored by the probation department.

Between December 22 and 24, 2007, M.W. violated his electronic monitoring three times by leaving the house and being out of range of the monitor. On December 28th, M.W.'s probation officer filed a notice of his monitoring violations.

On February 11, 2008, M.W. entered a plea agreement with the State. Pursuant to the agreement, M.W. admitted committing an act that would be theft and admitted violating a condition of his release. The State agreed to dismiss the burglary and resisting law enforcement allegations, the remaining violations of release conditions, and an allegation under another cause number that M.W. committed an act that would be the crime of escape if M.W. had been an adult. The court committed M.W. to the DOC:

> I note that the Probation Department has recommended that I continue you on suspended commitment and participation in the DAWN Program. But in good conscious [sic], I cannot accept their [sic] recommendation. I'm going to commit you to the Department of Corrections [sic] for placement in Boys School. I'm going to recommend a term of six months. Order that

> you continue with your vocational training, GED program, or educational training. That you participate in a substance abuse program and follow all recommendations. That you'll be eligible to participate in the Community Transition Program, transition program as well. I'll note that restitution is owed to [victim] in the amount of $110.00.

(Tr. at 12-13.)

DISCUSSION AND DECISION

M.W. alleges the court erred by committing him to the DOC. We may not reverse a juvenile disposition unless the trial court abused its discretion. *E.L. v. State*, 783 N.E.2d 360, 366 (Ind. Ct. App. 2003). An abuse of discretion has occurred if the court action was clearly against the logic and effect of the facts and circumstances, or the reasonable inferences therefrom, that had been before the court. *Id.* When making its disposition, statutes require the court be mindful of the welfare of the child, the safety of the community, and the policy favoring "the least harsh disposition." *Id.*

We treat juveniles who commit delinquent acts very differently from adults who commit crimes. *Id.* Instead of punishment, our system is intended to provide "individual diagnosis and treatment of juvenile offenders." *Id.* Therefore, "the policy of this State [is] to ensure that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation." *Id.* When entering a dispositional decree for a juvenile, the court must consider a number of factors:

> If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:
> (1) is:
> (A) in the least restrictive (most family like) and most appropriate setting available; and
> (B) close to the parents' home, consistent with the best interest and special needs of the child;

(2) least interferes with family autonomy;
(3) is least disruptive of family life;
(4) imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and
(5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

Ind. Code § 31-37-18-6. That statute requires the court to select the least restrictive setting *only* "if consistent with the safety of the community and the best interest of the child," *id.*, and "there are times when commitment to a suitable public institution is in the best interest of the juvenile and society." *D.S. v. State*, 829 N.E.2d 1081, 1085 (Ind. Ct. App. 2005) (internal quotation omitted).

M.W. notes the probation department recommended a suspended commitment to the DOC and participation in the DAWN Project.[1] (*See* App. at 89.) The trial court specifically found "its disposition is the least restrictive alternative to insure the Respondent's welfare and rehabilitation." (*Id*. at 15.) The court noted M.W. has true findings of delinquency in five separate cause numbers in addition to the current offense: in August of 2006, M.W. was found delinquent for committing an act that would have been Class D felony resisting law enforcement if he had been an adult; in March of 2006, M.W. was found delinquent for committing an act that would have been Class D felony criminal trespass; in August of 2005, M.W. was found delinquent for committing an act that would have been Class A misdemeanor criminal conversion; in October 2004, M.W. was found delinquent for committing an act that would have been Class B misdemeanor

[1] The "Dawn Project" is "a local program that is responsible for developing a coordinated, family centered, and community based system of services for children with serious emotional disturbances and their families." Ind. Code § 12-22-4-1.

criminal mischief; and in January of 2004, M.W. was found delinquent for committing an act that would have been Class D felony criminal recklessness.

The pre-disposition report also indicates M.W., in 2006, "failed" informal home detention, formal home detention, and formal probation. (*Id*. at 81.) While this allegation of delinquency was pending, M.W.

> was originally released on Supervised Community-Home Confinement on 09/07/07 and failed that on 09/25/07. Youth was released again on HC on 09/27/08 [sic], which in turn, youth failed again on 10/22/07. On 11/21/07, youth was released on the Electronic Monitor and finally youth failed that on 1/18/08. [sic] by coming and going from the house for approximately 3 days; then finally running away from his grandparents [sic] home to his mother's home.

(*Id*. at 87.)

In light of this history with the juvenile justice system, we find no abuse of discretion in the determination that placement in the DOC was the least restrictive, and most appropriate, placement for M.W. *See, e.g.*, *D.S.*, 829 N.E.2d at 1086 ("In light of D.S.'s failure to respond to the numerous less restrictive alternatives already afforded to him, we cannot say that the juvenile court abused its discretion in committing him to the Department of Correction."). Therefore, we affirm.

Affirmed.

ROBB, J., and NAJAM, J., concur.